

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HAKEEM G.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2006080894

DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 11, 2007.

Debbie Crudup, Senior Consumer Services Representative, appeared for the Inland Regional Center (IRC).

Rhonda Murillo, claimant's mother, and Brenda Rogers, Ph. D., Access Center for Education, represented claimant at the hearing. Claimant was not present.

The matter was submitted on January 11, 2007.

ISSUE

Should IRC fund a residential placement for claimant Hakeem G.?

FACTUAL FINDINGS

Background

1. Claimant, born June 25, 1993, is a 13-year-old boy who comes from a challenging family situation and has obvious difficulties that make his life and those around him harder. There is no question that in order to reach his potential he will need and require

a variety of supports and service. Without these supports and services he will have an overwhelmingly daunting time fending for himself. He is qualified for regional center services with a diagnosis of Autism and Mental Retardation. He has a loving and devoted mother who seeks answers to his obvious challenges and help in finding treatment interventions that will benefit him. He has been evaluated on numerous occasions in different settings. The issue is not over what is the appropriate diagnosis. That is not substantially in dispute. The issue relates to what is the best living arrangement for him based upon his needs and circumstances. It is beyond dispute that he is, to put it mildly, a handful. Mother claims that he is uncontrollable and getting worse and that he is not safe at home no matter what supports and services are provided. In addition, mother claims that IRC, for whatever reasons, has failed to provide needed supports and services. IRC claims that they have evaluated him properly and have made every effort to provide appropriate supports and services to claimant and his family and that new information about his condition was just recently supplied to them.

2. This case is not about eligibility for services under the Lanterman Act. There is no question that Hakeem G. is eligible for services. The only question for decision in this case is whether he has established by a preponderance of the evidence that grounds exist to order the IRC to fund a residential placement, as his family has requested. For the reasons articulated below, the need for residential placement has not been established. This is the appropriate result today. It may not be, however, at some time in the future. Some disputes between claimants and regional centers are clear cut, black and white, one way or another. Others, like this one, have a significant degree of grey to them. Furthermore, some, like this one, do not seem to add up when all the evidence from both sides is considered. The best way to capture the essence of this difficult issue is to acknowledge that claimant has significant deficits irrespective of how they are medically or psychiatrically categorized and that these deficits make his life, and that of those around him, exceedingly difficult and challenging. However, for the reasons expressed below, the weight of the evidence does not support a finding that Hakeem G. requires a residential placement funded by the regional center.

3. There is a huge disconnect between how the parties characterize the evidence and how the evidence is fairly characterized. Although both parties were clearly making their arguments in good faith, the arguments made by both sides are distortions of the facts.

4. The decision in this case rests on the meaning and application of three sections of the Welfare and Institutions Code to the facts that were established. The three sections are:

4648 (a) (1)-“The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer’s individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families.”

4648 (a) (2)-“In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work and recreational settings.”

4685 (c) (2)-Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out of home placement alternatives.”

5. Inland Regional Center best summarized its position regarding the request for residential placement in their August 17, 2006 denial letter (Exh. 2 in evidence). IRC wrote as follows:

“Inland Regional Center strives to provide families with supports and resources so that children can continue living with their families. By receiving the additional supports that you and your CSC are currently in the process of securing, including IHSS, behavior modification, respite, and social recreation, it is our hope that these supports will help reduce your stress and assist Hakeem in living at home. In order for these supports to work effectively, however it is important to have good communication with your CSC. If you find that you are becoming even more overwhelmed, please contact your CSC so that she can assist you in exploring new resources or alternatives to your existing services.”

Medical Evidence

6. The medical evidence is not substantially in dispute. Both sides acknowledge that claimant has had a diagnosis of Autism and Mental Retardation since approximately the age of three. The practical effect of the diagnoses is that he requires a tremendous amount of supports and services in order to be safe, protected, loved and provided with the best chance at developing to his fullest potential.

7. As of the date of the hearing, there were two people involved in the discussions regarding the supports and services to be supplied by IRC to meet the unique developmental needs of Hakeem. These were Hakeem’s mother, Rhonda Murillo and the IRC Consumer Services Coordinator (CSC) Colleen Bellinder. Both testified at the hearing. Both appeared sincere and well intentioned. However, there was obviously a huge problem with communication between the two. The communication problem is crucial to understanding why this case probably ended up at a fair hearing. Claimant had been offered some supports and services that appeared to be appropriate for his needs. These had not been supplied. Some had been turned down by the family. In other cases, objections were made by the family that seems to be silly and unreasonable. In other cases, the CSC did not do a very good job of follow-up or in making sure that the family knew and understood what services and supports were available. It seems that under the circumstances another CSC might be a better fit for this family. This has nothing to do with the overall competence of Ms. Bellinder. It is meant to address the obvious problem that exists. Sometimes, a new CSC will be a better fit for the family.

8. Colleen Bellinder testified at the hearing. She is a Consumer Service Coordinator for Inland Regional Center. She has been the case worker for claimant since May 2006 when he first became a consumer. She has seen and observed him at home and at school as part of her duties. She knows that he is autistic and mentally retarded but is not sure of the degree of mental retardation. A summary of her testimony would go something like this . . . “I saw him at school and he appeared to be doing just fine . . . very recently I was told things about his behaviors that were far more extreme than anything I had heard or seen before.”

9. Bellinder made various referrals for the family including respite and for behavior modification and weekend camping. She referred the family to Fuentes Family Counseling but Fuentes declined to serve the consumer. She also referred the family to IHSS as a generic resource. The family applied for IHSS benefits and this was denied. This denial, and the follow-up after, is a good example of how this situation did not work well for this claimant. Although both sides point the finger of blame at each other, it is impossible to determine who, if anyone, is at fault. It is, in fact, impossible to determine if fault is even the appropriate term to use to characterize what happened. There was just something here in the lack of communication and understanding on the part of both the mother and the CSC that got in the way of follow through and accomplishing a shared goal. Unfortunately, what is lost is service that may well be extremely beneficial for claimant. Although not bound by any finding in this case, it is hard to believe that claimant would not qualify for IHSS services. This is potentially as much as 283 hours per month of help. Based upon the testimony of claimant’s mother, it is clear that she needed more assistance from IRC than she received in terms of trying to qualify for IHSS services.

10. Respite is another service that was offered to the family. It is a very important and necessary benefit that the family should be taking advantage of. However, the family did not take advantage of it. This seems partly due to unreasonableness on the part of the family and a lack of effort on the part of regional center in making sure that all avenues of understanding have been explored. The mother’s feeling that she did not feel comfortable with strangers in her house is not reasonable under the circumstances. However, it may well be that, because of the behaviors of the claimant and the difficulty of finding a satisfactory respite worker, out of home respite is the most appropriate form of respite.

11. Bellinder testified that she was not made aware of several of the extreme behaviors of claimant until shortly before the hearing, particularly the information from the schools about violence and suspension. The implication of her testimony was that IRC was doing everything it could to meet the needs of the claimant. It is impossible at this time to determine why information seemed not to have been supplied and why once supplied a stronger response was not made. What is clear is that claimant needs more and better than what he has been getting and that mother and IRC need to do a much better job of communicating. Claimant needs and deserves out of home respite and a “wraparound” program that was to be vendored shortly after the date of hearing, in addition to behavior modification and social recreation.

12. Millie Martin-Walton testified on behalf of IRC. She has worked for regional center for 20 years. For the last nine years she has been the manager of unit with 15 case workers under her. She is familiar with the case of Hakeem G. It was her opinion that IRC did not have a real good grasp of exactly what claimant's needs were and that he has been a consumer for a very short time which is insufficient to base a decision regarding residential placement on. Her opinion was that claimant would most likely benefit if he got what has been authorized. She testified that the out of home respite could be available for the family. In such a situation, the claimant would go and stay at a facility. The weight of the evidence in this case strongly supports the need for out of home respite for this family. She also testified about the benefit that would be derived from providing claimant and his family with "wraparound" services, which is a new service soon to be vendored by IRC. The weight of the evidence strongly supports the need for this service for this family. She testified and established that under no circumstances would be IRC pay for out of state residential placement nor would it fund for a school placement.

13. Rhonda Murillo testified. She is claimant's mother. She is sincere and devoted to her son but is clearly at the end of her rope. She is beyond stressed and needs significant help from many different sources to effectively deal with her son and his out of control behaviors. He is now a teenager. He is five feet, seven inches tall and weighs 120 pounds. He is violent and non compliant and keeps getting suspended from school. The only good news on the school front was that his most recent placement, at Keystone, seems to be better for him. Claimant hits and bites and is very difficult to control in public. He is hyper sexual and does not understand boundaries. He requires so much effort that she has no time or energy to work or go to school. She fears that in another year he will be too strong for anyone to control him. She does not believe she is safe in her own home and that Hakeem is not safe either. Rhonda Murillo is recently married and her husband testified also to the extreme behaviors exhibited by claimant.

14. Ms. Murillo is understandably exhausted. However, she needs to summon enough energy to work with the IRC to implement a comprehensive plan to provide a safe and secure environment for claimant and hope for the rest of the family. She has asked for help. IRC needs to respond with more than promises and talk of new programs.

LEGAL CONCLUSIONS

The Lanterman Act

1. The Lanterman Developmental Disabilities Services Act (Act) is contained in the Welfare and Institutions Code. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (§ 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

The Lanterman Act was enacted to prevent or minimize the institutionalization of developmentally disabled persons, to prevent their dislocation from their families and the community, to enable developmentally disabled persons to approximate the pattern of everyday living of non-disabled persons of the same age and to permit developmentally disabled persons to lead more independent and productive lives within the community.

The Lanterman Act authorizes the Department of Developmental Services to contract with regional centers to provide developmentally disabled individuals with access to supports and services that are best suited to them throughout their lifetime or until it is determined that such services and supports are no longer required.

Regional centers are operated by private nonprofit community agencies. While the Department of Developmental Services may promote uniformity and cost effectiveness in the operation of regional centers, its responsibility does not extend to the control of the manner in which regional centers provide services or in general, operate their programs.

The Lanterman Act contemplates that the services to be provided to each client be selected on an individual basis. Whether a consumer is eligible for services depends on a consideration of all relevant circumstances. See, *Williams v. Macomber* (1990) 226 Cal.App.3d 225.

Welfare and Institutions Code section 4685 provides in part:

“(a) [T]he Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports, which enable a child with developmental disabilities to live at home, is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child’s individual program plan.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

- (1) Respect and support the decision making authority of the family;
- (2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.”

Developmental Disability

2. Section 4512, subdivision (a) of the Act defines a developmental disability as follows:

“(a) ‘Developmental disability’ means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.”

3. Section 54000 of Title 17 of the California Code of Regulations further defines the term developmental disability:

“(a) ‘Developmental Disability’ means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development

which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

Burden of Proof

4. In a proceeding to determine eligibility or a dispute over the provision of services, the burden of proof is on the Claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

The Evidence Was Not Sufficient to Establish That Claimant Was Entitled to Residential Placement at this time

5. Claimant’s major contention was that there was nothing short of residential placement to provide him (and his family) with safety and security and any hope. The evidence was not sufficient to support this contention. At the time of the hearing, such an Order was premature. It may well be that such an Order, at some time in the future, might be necessary. However, no real and comprehensive effort has been made to provide and execute the full range of services that would be beneficial for claimant. This includes, but is not limited to, qualifying for IHHS, out of home respite, behavior modification and social recreation. There needs to be cooperation between family and IRC and a united effort to provide a “supports and services” safety net.

6. The law is clear in that a preference is established by the legislature for keeping a child with a developmental disability living in the home. It is, in most situations, the best chance that a child has to grow and develop to his or her fullest potential. Nevertheless, this is not always the case. That is why Welfare and Institutions Code section 4685 (c) (2) uses the phrase “when living at home will be in the best interest of the child.” The preference of the law is to keep children at home...when living at home will be in the best interest of the child.” This cannot be determined unless the supports and services discussed above have been given a chance to work.

7. These conclusions are based on all the factual findings and legal conclusions.

ORDER

Claimant's request for an order requiring IRC to fund a residential placement is denied. Claimant failed to meet his burden of proof that he is entitled to such an order at this time.

DATED: _____

STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.